



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/20/1007

Re: Property at 12/1 Yeaman Place, Edinburgh, EH11 1BX (“the Property”)

Parties:

Ms Shazia Bibi, 12/1 Yeaman Place, Edinburgh, EH11 1BX (“the Applicant”)

Ms Sharon Gordon, residing at 3 Prudhoe, Australia, 4223, Australia and also care of Lunar Lets/TCF Property Management Ltd, address unknown (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment due to the landlord’s failure to timeously lodge the tenancy deposit with an approved scheme.
2. The application contained,
 - Tenancy agreement
 - Emails
 - Deposit certificate

3. The Applicant attended the case management discussion (CMD) together with her representative, Mr Wilson from CHAI. There was no appearance by the Respondent or her letting agents. This CMD had previously been scheduled to take place on 5 August 2020. On 20 July 2020, the Respondent's letting agent had advised that the Respondent had received the paperwork for the CMD taking place on 5 August 2020. That CMD was however cancelled due to the sheriff officers intimating that they had been unable to serve papers on the Respondent's letting agents. The CMD was rescheduled to 27 August 2020. Notice of today's CMD was made by service by advertisement. Service was made on the following terms "*Sharon Gordon, Lunar Lets/TCF Property Management Ltd*" by advertisement from 23 July 2020. Notice of today's CMD had also been sent to the Respondent to her home address "*3 Prudhoe, Australia, 4223*". I considered that as the Respondent's letting agents had advised that the Respondent was aware of the application; that as further papers had been sent to the Respondent at her Australian home address; and as service by advertisement on the Respondent, care of her letting agents had taken place, then I was entitled to proceed with the CMD in her absence. I also noted that the Applicant had only been able to obtain the address of the Respondent from the landlord's registration register; the tenancy agreement had the Respondent designed care of her letting agent; the letting agents had failed to provide the Applicant with their postal address and would only provide email addresses; and the Applicant's representative had emailed the Respondent's letting agents earlier this week to advise that he would be appearing as a representative for the Applicant at today's CMD.

Discussion

4. The Applicant confirmed that she was seeking a payment order against the Respondent for her failure to lodge her deposit into an approved scheme within 30 working days.
5. The Applicant advised that she had paid a deposit of £1000 prior to commencement of her tenancy. She paid a holding deposit of £200 and the balance when the tenancy commenced. The tenancy commenced on 9 July 2016. She advised that the letting agents had advised her that the deposit would be safe and would be lodged in an approved scheme. However, once she had taken entry to the property, she did not hear anything further about her deposit. She was aware that it needed to be protected in a scheme and she was concerned about this. She advised that she began calling the letting agents to find out where her deposit had been lodged. She advised that she called the letting agent frequently for several weeks to try and get information about her deposit. The letting agent however gave her the run around and sent her off on wild goose chases; advising her it was in an approved scheme and when she enquired with that scheme it turned out that her deposit was not there.
6. She was concerned that she had to tell the letting agents what the law was, and that her deposit needed to be secured. She advised that she eventually received confirmation in around the end of September 2016 that the deposit had been secured in a scheme, this advice came from Safe Deposits Scotland. She was also concerned to find out that the deposit had been paid in two instalments and this

led her to believe that her deposit had been used for another purpose before it had been lodged with the approved scheme.

7. She was upset that she had been lied to about where her deposit had been. She had spent a lot of time and effort trying to track it down. It had caused her anxiety.
8. Her representative advised that the Respondent and her letting agents had never provided any information to the Applicant about her deposit as they are required to do in terms of regulation 42 of the Tenancy Deposit regulations. The first that the Applicant knew about it was when she received correspondence from Safe Deposits Scotland.
9. The Applicant's representative submitted that this was a regulatory breach and although the deposit had not been unprotected for a long period of time, it was relevant that the letting agents were a professional organisation dealing with renting out properties. The letting agents should have been on top of this matter. Further there had been a total failure by the Respondent and her letting agents to provide the necessary information as required by the regulations. It was unprofessional conduct. The letting agents were professionals in the housing rental market, and the fact that the information had never been provided to this Applicant made this a fairly serious breach of the regulations.

Findings in Fact and Law

10. The tribunal made the following findings in fact and law: -

- (a) That a tenancy had commenced on 9 July 2016.
- (b) The Respondent was the landlord and the Applicant was the tenant.
- (c) That the Applicant had paid the Respondent a tenancy deposit of £1000 in early July 2016.
- (d) That the tenancy has not ended.
- (e) That the tenancy deposit was not lodged with an approved scheme until 23 and 29 September 2016.
- (f) That the tenancy deposit was not lodged with an approved scheme within 30 working days of the tenancy beginning.
- (g) That the Respondent had not provided the Applicant with information about the tenancy deposit, as required to do so under regulation 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Reasons for Decision

11. The Tenancy Deposit Schemes (Scotland) Regulations 2011 set out a number of legal requirements in relation to the holding of deposits, and relevant to this case are the following regulations: -

3.— (1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

(a) pay the deposit to the scheme administrator of an approved scheme; ...

...

12. Regulation 9 provides that a tenant who has paid a tenancy deposit may apply to the first-tier tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

13. Regulation 10 provides that if satisfied that the landlord did not comply with any duty in regulation 3 then the first tier tribunal — must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and may, as it considers appropriate in the circumstances of the application, order the landlord to— (i) pay the tenancy deposit to an approved scheme; or (ii) provide the tenant with the information required under regulation 42.

14. The Respondent did not appear today. Her letting agents also did not appear on her behalf. She did not submit any written or verbal representation about what happened to the deposit; why it was lodged late and why she had not supplied information to the Applicant about her deposit.

15. A deposit was paid by the Applicant; the deposit was not secured in an approved scheme until 23 and 29 September 2016 which is outwith the period that landlords have to lodge a deposit, namely, 30 working days from the beginning of the tenancy; and no information was provided by the Respondent as to what happened to the deposit. I consider therefore that the terms of Regulation 10 are engaged, and I must order that the Respondent pay the Applicant an amount not exceeding three times the amount of her tenancy deposit. The amount to be paid requires to be determined according to the circumstances of the case, the more serious the breach of the regulations the greater the penalty.

16. In this case, I consider that a sum of 1.5 times the value of the deposit would be appropriate, namely £1,500.

17. There has been a breach of the regulations. I agree that it has been a fairly serious breach. Any penalty should reflect this.

18. In considering what penalty to impose, I have had regard to the written and verbal submissions by the Applicant.

19. I consider that it is a serious matter to fail to lodge a tenancy deposit in accordance with the regulations, albeit I do note that this failure was not ongoing for any great length of time. The tenancy agreement refers to a deposit being lodged with an approved scheme. Both parties were therefore aware of the requirement to lodge the deposit. The Respondent's contact details on the tenancy agreement were care

of the letting agents. I consider that she had delegated responsibility of the tenancy deposit to them. The letting agents were the contact for matters to do with the tenancy. I agree that the letting agents are a professional organisation. They should have been well used to the responsibility of renting out properties; and should have understood their duties and ensured that the tenancy deposit is safeguarded by placing it into approved scheme timeously.

20. It appears that the Applicant had been involved in several weeks of stressful and generally fruitless attempts to find out where her tenancy deposit was. It is difficult to understand why she should have been put to such a needless waste of her time for several weeks. The letting agents did not appear to have had any regard to the Applicant's concerns about what had happened to her money. This appeared to have caused the Applicant anxiety. It appears that this anxiety is in some respects ongoing as she has had difficulty in ensuring that notice of today's hearing could be made upon the Respondent.
21. I note that the Respondent and the letting have never provided the Applicant with the information about the tenancy deposit that they are obliged to provide. It appears that they have acted with a rather reckless disregard for the regulations.
22. There are however two issues that mitigate from the seriousness of the matter, the Respondent had 30 working days from the beginning of the tenancy in which to lodge the deposit, and therefore had until around mid-August to do so. The time when the deposit was not secured was relatively short, approximately 6 weeks. In addition, the Applicant is not now prejudiced because the deposit is secure. I have been made aware of no other mitigation for the Respondent.
23. I consider that orders in these cases impose a sanction on a landlord. It is hoped that the sanction will make a landlord take note of the breach; rectify future conduct; and ensure that tenancy deposits are secured in accordance with the regulations. For all the reasons set out above, I consider that the matter is serious however the deposit is secured and was not unsecured for a long period time, and balancing all of these factors leads me to believe that a sanction of one and half times the deposit would be appropriate in this case.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Melanie Barbour

Melanie Barbour
Legal Member/Chair

27 August 2020
Date

